

THE HONORABLE MARC BARRECA  
Chapter 7  
Place: Marysville Municipal Court  
Courtroom 1  
1015 State Avenue  
Marysville, WA 98270  
Hearing Date: February 14, 2018  
Time: 10:00 a.m.  
Response Date: February 7, 2018

UNITED STATES BANKRUPTCY COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In Re:

John Sullivan Good and Janice Broder Good,

Debtors.

Chapter 7

CASE NO. 16-15265

REPLY TO DEBTORS' REPOSE TO  
1) OBJECTION TO HOMESTEAD  
EXEMPTION AND 2) MOTION FOR  
SANCTIONS

The undersigned trustee, Michael P. Klein, replies to the debtors' response to objection to homestead exemption as follows:

The debtors do not provide an explanation of why the "snap shot" rule should not be applied. It is telling that the debtors did not address the rule at all in their response. The 9<sup>th</sup> Circuit is clear of how the "snapshot" rule must be applied. It is the "*entire*" state law exemption statute that is applicable on the filing date. In re Jacobson, 676 F.3d 1193, 1199 (9<sup>th</sup> Cir. 2012). The debtors cannot just pick one provision of the homestead exemption statute and ignore the rest. The 9<sup>th</sup> Circuit rejects the permanent exemption argument and made clear that "Bankruptcy Code does not allow the [debtor] to invoke one part of the homestead exemption and ignore another part." Jacobsen at 1200. The homestead

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1 exemption statute that the debtors are encouraging this court to ignore both RCW 6.13.010(1) and  
2 6.13.050. RCW 6.13.010(1) makes it clear that a "homestead" is defined as "real or personal property  
3 that the owner uses as a residence... . . . [emphasis supplied]" The debtors are not residing in residence.  
4 The property has been empty since April, 2017. RCW 6.13.050 makes it clear that "[a] homestead is  
5 presumed abandoned if the owner vacates the property for a continuous period of at least six months."  
6 The debtors have not provided any evidence, even a simple declaration that attempts to overcome the  
7 presumption.  
8

9 The Jacobson court even went out of its way to reject two lower 9<sup>th</sup> Circuit courts' reasoning to  
10 the contrary (In re Seelin re Herman, 120 B.R. 127 (BAP 1990) and bankruptcy court out of Oregon, In  
11 re Lane, 364 B.R. 760 (Bankr. D.Or. 2007)). The lower courts arguments that were rejected by the  
12 Jacobsen court are the same arguments that the debtor is trying to argue now. The debtor is trying to  
13 argue in this case that the date to determine when an exemption should be allowed and frozen is the  
14 bankruptcy petition date. That is not what Jacobson stands for. Jacobson is clear, if the debtor finds  
15 himself or herself not qualifying for an exemption during the bankruptcy, regardless of whether the  
16 debtor qualified on the date of filing, then the debtor loses the exemption. The debtors in this case are  
17 trying to read out the requirement that the debtor must continually reside in the residence. In addition,  
18 they have not addressed the presumption that they abandoned the property by not filing a declaration of  
19 nonabandonment. .  
20  
21

22 Contrary to what is being asserted by the debtors, the exact issue or issues were not addressed in  
23 the In re Kurceris, 557 B.R. 6 (Bankr.E.D.Mass 2016) case. It is not even close. The facts in the present  
24 case are basically the opposite and that is why the "snap shot" rule was not at issue. In the Kurceris  
25 case, the debtor resided in the homestead on the date of conversion, but did not reside in the property  
26 when the petition was filed. It would not make sense for the Kurceris trustee to argue that hat the  
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1 debtors had abandoned the property since the debtor was living in the subject property at the date of  
2 conversion. In this case, the debtors resided in the property on the date of filing, but not on the date of  
3 conversion.

4 Furthermore, it made a difference in the Kurceris case when the debtors filed their petition, but it  
5 should not make any difference in this case. What is key is that the debtors in this case are not now  
6 qualified to claim a homestead exemption because they are not living in the property, abandoned the  
7 property and even stated that they would not exempt the proceeds from the sale. The debtors in the  
8 Kurceris claim that the date of conversion controls because they resided in the home on the date of  
9 conversion and argued that is when the exemption statute controls. The undersigned trustee is not  
10 making the argument that the facts at the time of conversion controls or whether they control at the time  
11 filing. It does not matter because the 9<sup>th</sup> Circuit has made it clear that a debtor does not get a  
12 “permanent” exemption if there is a change in circumstances that does not comport with the entire  
13 exemption statute.  
14

15  
16 Furthermore, it is clear that the 9<sup>th</sup> Circuit would have held differently than the bankruptcy judge  
17 in the In re Kuceris case. Citing Myers v. Matley, 318 U.S. 622 S. Ct. 780, 87 L.Ed. 1043 (1943), the  
18 Jacobson court acknowledge that an Arizona debtor had the ability to file a homestead declaration after  
19 the filing of a bankruptcy. Jacobson at 1199. Furthermore, when applying Washington law, the 9<sup>th</sup>  
20 Circuit BAP has made it clear that a debtor has a right to defeat a potential sale by a trustee by filing a  
21 declaration of homestead post-filing. See In re Gitts, 116 B.R. 174 (BAP (Wash.)1990). Similarly, the  
22 debtors could have filed a declaration of nonabandonment.  
23

24  
25 At least one other bankruptcy court in the 9<sup>th</sup> Circuit has even held that it is possible for the  
26 debtor to cure an exemption claim disqualification post-petition. See In re Gilbraith, 523 B.R. 198  
27 (Bankr.D. Ariz. 2014). The debtors in the Galbraith case claimed that they had an exemption in a

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1 qualified profit sharing plan and may have arguably lost it post-filing, but were able to make the  
2 corrections required retroactively. In this case, the debtors had the opportunity to move back into the  
3 home and rebut the presumption that they had not abandoned the property by filing a declaration of  
4 nonabandonment, but did not do so. They did the opposite. The debtors lulled the trustee into a false  
5 sense of security that they told him that they were not going to assert a homestead exemption even if the  
6 trustee sold the homestead.  
7

8           The undersigned trustee did not miss the deadline to file an exemption. Contrary to what  
9 is being argued by the debtors, the declaration filed by the debtors on July 5, 2017 was insufficient.  
10 The July 5 declaration contains very restrictive language. It states that they had “read the summary and  
11 schedules filed with this declaration and that they are true and correct [emphasis provided].” However,  
12 Schedule C was not among the schedules that were filed. The debtors simply ignore the language of the  
13 June 15, 2017 order. The order specifically stated that they were required to file a completely new set  
14 of schedules or “a declaration under penalty of perjury that there has been on change in the schedules...  
15 [emphasis provided]“ In this case, the debtors did not file an amended Schedule C or a declaration  
16 with the magic language that there had been no change to Schedule C. The experience of the  
17 undersigned trustee is that upon conversion from Chapter 13 to Chapter 7 it is common for debtors to  
18 file new schedules, a declaration, or a combination of both if there had been change to some but not all  
19 of the schedules. Since the debtors did not file what they were supposed to file, the time to object had  
20 not run. The time to object to a claimed exemption does not run until the debtor amends the schedules  
21 and a creditor entitled to notice is served with the amended schedules. In re Woodson, 839 F.2d 610,  
22 616 - 617 (9<sup>th</sup> Cir. 1988).  
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1 Furthermore, consistent with the “snap shot” rule, the debtors would have committed perjury if they had  
2 claimed that there was no change to Schedule C as it pertains to the homestead exemption. They would  
3 have been required to disclose they were not eligible for a homestead exemption because they resided  
4 elsewhere and abandoned the subject home.

5 The debtors should not be allowed to amend their exemptions to claim the federal exemptions.  
6 The debtors should be precluded from doing so based on the preclusive effect of res judicata and  
7 prejudice. See In re Romano, 378 B.R. 454, 463-464 and 465-468, respectively (Bankr. E.D. Penn.  
8 2007). Nonetheless, it is probably premature to rule on any attempt at an amendment. An amendment  
9 has not been filed. Again, the time to object to a claimed exemption does not run until the debtor  
10 amends the schedules and a creditor entitled to notice is served with the amended schedules. Woodson  
11 at 616-617.  
12

### 13 CONCLUSION

14 Wherefore, the Trustee seeks an order denying the debtors a homestead exemption as noted  
15 above.  
16

17 Dated this 21<sup>st</sup> day of February, 2018.

18  
19 /s/Michael P. Klein  
20 Michael P. Klein  
21 Chapter 7 Trustee

### 22 DECLARATION

23 The undersigned trustee has personal knowledge of the foregoing and proffers the foregoing  
24 factual assertions are true and correct under penalty of perjury.

25 Dated this 21<sup>st</sup> day of February, 2018.

26 /s/Michael P. Klein  
27 Michael P. Klein

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